access deficit charges and the adoption of a plan for the introduction of local number portability by 1997.[29]

Equal access presubscription and dialing parity are not available in the UK today.[30] As shown below, unless and until equal access presubscription and dialing parity is available to UK competitors of BT, competition in the U.S. will suffer.

A. Equal Access Presubscription and Dialing Parity in the UK Will Promote Competition on the U.S.-UK Route

Notwithstanding all of the legal freedoms and regulatory rules in the UK, the lack of equal access presubscription and dialing parity continues to constrain the ability of new entrants to become viable competitors of BT. More important, from a U.S. perspective, it seriously limits the opportunity for U.S. carriers to find termination options at rates competitive with BT in the UK. The plain fact is that the opportunity to capture U.S. inbound calls at rates competitive with the effective settlement rate existing U.S. carriers pay BT ($0.036 per minute) is not a viable business opportunity.

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[29] After BT's initial delays, portability of freephone (e.g., 800/500 area codes) and other special access codes, which is referred to as "non-geographic number portability" in the UK, also appears to be progressing. A trial will be implemented in 1997 and the remaining issue is whether BT's prices for portability will be reasonable.

[30] UK customers that choose "indirect access providers" (like AT&T-UK, ACC or Energis) must dial a three-digit access code on a call-by-call basis; no presubscription is available. Calls dialed without an access code are automatically routed by default to BT.

Indeed, the investment required to build the plant necessary could not be justified on an inbound UK business. Thus, the practical opportunity for U.S. carriers to use alternatives to BT will develop only when UK competitors have robust networks capable of handling UK outbound and inbound traffic.

Yet, absent equal access, UK operators are limited in their ability to capture a meaningful share of BT's outbound traffic as well. This fact is confirmed by recent data. From 1994 to 1995, BT's market share of the public switched voice international facilities market (measured by minutes) remained relatively stable, declining by only .9% from 68.6% to 67.7%.[31] During the same period, the market share of MCL declined from 28.1% to 25.5%, while new international resellers grew from 3.3% to 6.5% of the market.[32] This data suggests that the emergence of new international providers in the UK has had little effect on BT's position in the market. Instead, MCL's market share drop reflects the churn among BT's competitors for that market segment already willing to switch from BT and incur the inconvenience of disparate dialing protocols.

The net result is that U.S. carriers are and will remain dependent on BT and subject to BT's price and non-price

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31 Telegeography, Global Telecommunications Traffic Statistics and Commentary (1996).

32 Id.

discrimination. Equally important, to the extent "self-corresponding" U.S. carriers attempt to compete with BT/MCI, they will be unable to do so viably. With its existing dominant position and bolstered by the lack of dialing parity and presubscription, BT will retain the predominant share of UK-U.S. traffic. Together, on a two-way basis, BT/MCI's volumes will far exceed any other U.S.-UK competitor's volumes. As a result, BT/MCI will incur lower facility costs than other U.S.-UK competitors on the route, limiting the ability of competitors to compete effectively in the delivery of services to U.S. customers.

The lack of equal access and its effect on U.S. competition is made more significant to the extent that legal proportionate return obligations are relaxed or eliminated on the U.S.-UK route. This is so because customer selection of a carrier in the UK and carrier affiliation will determine which U.S. carrier will terminate the call, not proportionate return. Absent legal rules, BT presumably will send the originating minutes it captures in the UK to MCI, while other UK entrants will send their UK minutes to affiliated entities in the U.S. In the absence of dialing parity and presubscription, however, BT's competitors in the UK will continue to be impeded in their efforts to capture UK outbound volumes.

A clear consensus exists among U.S. policymakers, customers and competitors on the importance of equal access for effective competition. Indeed, the very size and scope of MCI is in large measure due to the availability of equal access in the U.S. The critical importance of equal access was also recently recognized by the European Commission.[33] The EC states:

> For competition to be effective, users must be able to choose easily between the services of competing carriers....
>
> Carrier selection is essential, if fair and non-discriminatory competitive conditions are to be created.
>
> [T]he introduction of carrier selection would assist in the migration of users from one operator to the other. It would make customers more aware of competitive alternatives, customers would not have to invest so much time and money...in changing to a new operator...and customers would avoid having to dial additional digits in order to access an operator's network.

Unfortunately, Oftel has concluded that BT should not be obligated to provide equal access in the UK. Thus, without a de novo review by Oftel or BT's agreement to make equal access available, it will not occur. To ignore the impact on the practical limitations the lack of equal access has on "self-

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[33] Green Paper on a Numbering Policy for Telecommunications Services in Europe, COM(96)590, Nov. 20, 1996. Unfortunately, the Green Paper proposes a phased in implementation plan that would only commence in January 2000. Even more troublesome, it is not at all a certainty that the Green Paper proposal will be adopted. BT and other European telephone administrators likely will object to equal access, and the position of the UK government also will be important.

correspondency" or other alternatives for U.S. carrier call termination would be misguided. The plain reality is that, absent equal access, BT will control U.S. carriers costs to terminate U.S. calls and will enable BT to otherwise maintain its market power.

B. Number Portability of Correspondent Service Access Codes Used with BT Should Be Required

Although BT now is obligated to make non-geographic customer number portability available, the way in which that portability will apply to special access codes used for existing correspondent services, like country direct, is uncertain. Country direct, like AT&T's USADirect®, is provided pursuant to bilateral operating agreements today. BT has assigned a non-geographic carrier access code to AT&T's USADirect service which directs calls to the AT&T USADirect platform. AT&T has incurred significant marketing expense to advertise that access code both in the UK and on worldwide advertising material. If BT is not legally obligated to allow unaffiliated U.S. carriers to move their country direct access codes to another UK entity, BT could exercise its power to prevent U.S. carriers from transferring their non-geographic country direct access codes to other UK correspondents. BT's incentive to do so will arise not only from the settlement payments it receives on U.S. carrier country direct services, but also from the clear competitive harm that its U.S. carrier competitors would suffer thereby.

The competitive harm to AT&T's USADirect service from a BT decision not to allow the portability of its country direct access code would be substantial. The U.S.-UK route is one of AT&T's largest USADirect traffic streams and the majority of AT&T USADirect calls are made using the BT/AT&T access code. Short of physically blocking customer calling using the BT USADirect access code and of suffering the losses in AT&T's market position as a result, AT&T would be unable to shift its minutes to other UK operators without portability of the code.

BT should be prohibited from using its market power in this way, and as a condition of approval, BT should be required to permit the portability of U.S. carrier access codes used for existing or new bilateral or global services.

C. Cable Capacity and Access Issues Must Be Resolved Before International Facilities Based Competition Can Begin

MCI argued in its comments opposing the BTNA motion for reclassification that "broader facilities-based competition beyond the existing duopoly is still a promise rather than a reality."[34] MCI based its argument on the fact that "many significant implementation issues have yet to be decided by

[34] MCI Comments on BTNA Motion, supra note 3, p. 2.

DTI concerning the license provisions that will apply to the new entrants, as well as the interconnection and access obligations that will apply to BT with respect to the new operators".[35] Specifically, international facilities-based competition in the UK (and self-correspondency by U.S. carriers) cannot be operationalized until regulatory rules are resolved and commercial agreements are completed with respect to the acquisition of UK-end cable capacity, BT (and MCL) cable station access and/or co-location, and backhaul interconnection of capacity to their inland networks. Until these issues are resolved, a finding that the UK satisfies the Commission's "effective competitive opportunities" test for international facilities-based competition would be premature.

At the present time, there is no ability for new entrants to own and operate international facility capacity in existing cable systems. By the terms of applicable cable system Construction and Maintenance Agreements, only consortium owners may purchase capacity from existing cable system reserve. On the UK end, BT and MCL own virtually all of the UK-landed cable capacity, and most new entrants do not have a contractual right to purchase capacity from the cable system reserve. To date, there is no obligation in BT's or MCL's license requiring either of those companies to sell existing

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[35] Id. at 2-3.

capacity they have previously acquired, or to procure capacity from the reserve and transfer such capacity to new entrants. Without such a license condition, the UK regulator, Oftel, lacks the authority to impose such obligations on BT or MCL. Thus, any decision by BT to transfer existing capacity or purchase capacity from the reserve for transfer to new entrants is a matter within BT's sole discretion. Until such time as BT undertakes an obligation that ensures new entrants the capacity they require to compete with BT, the Commission should not approve BT's proposed acquisition.[36]

Even were new entrants able to procure UK-end capacity in existing or new cable systems, there is no present legal obligation on BT or MCL to permit competitors the right to access that capacity at the UK landing point. While a co-location option at the cable station would not be feasible until such time as the new entrants handled volumes sufficient to justify the "build-out" to the cable station[37], "co-location" of competing carriers' facilities at the cable

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[36] Despite the existence of multiple U.S. carrier-owners in existing cable systems and an active market for the sale of capacity in the U.S. on an "indefeasible right to use" basis, in the context of the AT&T's Motion for Reclassification for Nondominant Carrier Status, AT&T agreed to act as a broker for the purchase and resale of cable capacity in existing cable systems. See Motion of AT&T Corp. to be Declared Non-Dominant for International Service, Order, Appendix A (1996)..

[37] Co-location for new UK operators could be economically feasible if they were to terminate significant amounts of U.S. carrier traffic.

station has not been debated yet in the UK.[38] Oftel has not made a determination that a co-location obligation is within the scope of BT's or MCL's present license conditions. Nor is there a present obligation that BT or MCL sell to new entrants the "backhaul interconnection" from the cable station to the inland networks of AT&T-UK and others. BT has made backhaul prices available, which could become the subject of intervention by Oftel. Determination by Oftel would be necessary to obligate BT to make backhaul available and to do so at reasonable, non-discriminatory rates. Finally, to the extent backhaul were made available at reasonable prices by BT or MCL (depending on which company owned the particular cable station), there is no obligation on either firm to ensure non-discriminatory restoration of capacity in the cable systems or on the backhaul arrangements between cable systems. Until such time as BT undertakes obligations to resolve these matters, the Commission should not approve BT's proposed acquisition.

38 Co-location at AT&T's transoceanic cable stations has been an important right of competing U.S. carriers in the U.S. It provides the means for AT&T's competitors to connect the capacity they purchase in a cable system to their inland network without relying on AT&T to transport their traffic from the cable station to a gateway switch. MCI is co-located at all of AT&T's cable stations and Sprint is co-located at some.

CONCLUSION

For the reasons described above, the Commission should promote competition in the U.S. by imposing appropriate competitive safeguards in the MCI licenses to be acquired by BT. These safeguards, however, must be coupled with changes in the UK, including equal access and portability of carrier access codes for bilateral services, to allow for the development of effective competition in the provision of services to U.S. customers.

Respectfully submitted,

AT&T Corp.

By: Elaine R. McHale

Mark C. Rosenblum
Elaine R. McHale

Its Attorneys

Room 3245H2
295 N. Maple Avenue
Basking Ridge, NJ 07920
908-221-2831

Dated: January 24, 1997

CERTIFICATE OF SERVICE

I, May Morrison, do hereby certify that forgoing "Comments of AT&T Corp.", dated January 24, 1997, have been sent by United States mail, postage prepaid, to the parties listed on the attached service list.

May Morrison

May Morrison

SERVICE LIST

Dr. James E. Soos
Deputy Assistant
Secretary of Defense
Room 3E
6000 Defense Pentagon
Washington, D.C. 20301-6000

Carl Wayne Smith, Esq.
Code AR Defense Information
Systems Agency
701 So. Courthouse Road
Arlington, VA 22204

Office of
General Counsel
Nat'l Security Agency
9800 Savage Road
Fort Meade MD 20755-6000

Ambassador Vonya B. McCann
United States Coordinator
International Communication
and Information Policy
Department of State
Room 4826
2201 C Street, N.W.
Washington, D. C. 20520

Cathleeen Wasilewski
Attorney Advisor, Office of Chief
Counsel
Department of Commerce
Room 4713
14 St & Constitution Ave NW
Washington, D.C. 20230

Richard Beaird
Bureau of International
Communications and
Information Policy
Department of State
Room 4836
2201 C Street, N.W.
Washington, DC 20520-1428

Steven Lett
Bureau of Int'l Communications
and Information Policy
Department of State
Room 4826
2201 C Street, N.W.
Washington, D.C. 20520

Suzanne Settle
Senior Policy Advisor
NTIA
Department of Commerce
Room 4701
14th St. &
Constitution, N.W.
Washington, D.C. 20230

Anthony Cina
Bureau of International
Communications and
Information Policy
Department of State
Room 4826
2201 C Street, N.W.
Washington, D.C. 20520

Jack Gleason
Acting Administrator
Office of International Affairs
NTIA
Department of Commerce
Room 4701
14th St. & Constitution Ave., N.W.
Washington, D.C. 20230

Gary Couey
Bureau of International
Communications and Information
Policy
Department of State
Room 4826
2201 C Street, N.W.
Washington, D.C. 20520

Deputy Assistant Secretary
for Communications and
Information
NTIA
Department of Commerce
Room 4898
14th Street &
Constitution, N.W.
Washington, D.C. 20230

Robin R. Layton
ITA
Department of Commerce
Room 4324
14th St. &
Constitution, N.W.
Washington, D.C. 20230

Barbara Wellberry
Chief Counsel
Department of Commerce NTIA -
Room 4713
14th St &
Constitution Ave, N.W.
Washington, D.C. 20230

Robert S. Koppel
VP - Legal & Regulatory
Affairs
IDB Worldcom
15245 Shady Grove Road
Suite 460
Rockville, MD 20850

Jack M. Scorce, Esq.
MCI International, Inc.
1801 Pennsylvania Ave NW
Washington, DC 20006

Gail Polivy, Esq.
GTE Telecom Inc.
1850 M Street, N.W.
Suite 1200
Washington, DC 20036

Keith H. Fagan
COMSAT Communications
6560 Rockspring Drive
Bethesda, MD 20817

Michael Fingerhut, Esq.
Sprint Corporation
1850 M Street, N.W.
11th Floor
Washington, DC 20036

Larry Irving
Assistant Secretary for
Communications & Information
Department of Commerce - NTIA
Room 4898
14th Street & Constitution Ave., N.W.
Washington, D.C. 20230

John Dalton
Secretary of the Navy
Office of the Secretary
Department of the Navy
The Pentagon
Washington, D.C. 20310

Joel Winnik, Esq.
Hogan & Hartson, LLP
555 13th Street, N.W.
Washington, D.C. 20004-1109